

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF GENERAL SERVICES
CENTRAL PROCUREMENT OFFICE
AND
CONTRACTOR NAME

This Contract, by and between the State of Tennessee, Department of General Services, Central Procurement Office ("State") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of Statewide Contract (SWC) 191 Slope Stabilization Services-**Awarded Group**, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is **a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.**

Contractor Place of Incorporation or Organization: **Location**

Contractor Edison Registration ID # **Number**

A. SCOPE:

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:

- a. ACI - American Concrete Institute
- b. AASHTO - American Association of State Highway and Transportation Officials
- c. ASTM - American Society for Testing and Materials
- d. Authorized User - Entities that are authorized to and who may purchase off this Statewide Contract. This includes: all Tennessee State governmental entities, Tennessee local governmental entities, the board of trustees of the University of Tennessee system, the Tennessee board of regents system, or the State university boards; any private non-profit institutions of higher education chartered in Tennessee; and eligible Non-Profit Agencies per Tenn. Code Ann. 33-2-1001

A.3. Scope. The Contractor shall stabilize identified landslides by internally reinforcing the soil mass with reinforcing elements (soil nails) using installation methods as specified in this contract. The State or Authorized User will identify locations of all work to be performed as specified herein. The Contractor shall provide labor, equipment, supervision, and to provide "on-call" services as needed for emergency landslide repairs. The Contractor shall provide services under one or more of the following groups: 1) Soil Nailing, 2) Horizontal Drains, 3) Railroad Rails and Cribbing. Group one shall include the following methods: 1) self-drilling soil nails, 2) permanently cased soil nails, and 3) slope stabilization services. The Contractor shall provide stamped engineered design and service warranty for Group One, soil nailing. **The Contractor shall be responsible for cleanup. The Contractor shall ensure that the work area is clean of all nails, debris, etc. at the end of each day to ensure safety. The Contractor shall clean up and haul away debris when work is completed.**

A.4. State of Tennessee Special Provisions, Standards, and Specifications.

- a. Contractor must comply with the special provisions provided in Attachment 1.
- b. Contractor must comply with the industry standards and specifications outlined throughout this contract, such as but not limited to American Society for Testing and Materials (ASTM), American Concrete Institute (ACI), and The American Association of State Highway and Transportation Officials (AASHTO). Contractor shall remain compliant with any updates to these standards or specifications throughout this contract term.

A.5. Contractor Award of Non-Emergency Jobs - Each group will have an A, B, and C Vendor. A through C Vendors will be determined based on the first (A), second (B), and third (C) highest score each vendor receives on their Request for Qualifications in each individual group. For each

Group, Vendor A shall be given the first opportunity to perform all non-emergency jobs. Jobs involving a mix of work from more than one Group (e.g. Group One Soil Nailing and Group Two Horizontal Drains) may be quoted among all vendors awarded within the applicable Groups and award of the job will be made to the vendor who is able to complete the job in the most time efficient manner.

- a. Estimates must be provided free of charge to the End User. The Contractor may not charge for any time on-site or travel costs associated with putting together and providing an estimate.
- b. Estimates must be broken down according to the item numbers on the contract.
- c. The repair cost cannot exceed the amount Estimated without written justification from the Contractor and prior written approval from the Authorized User.
- d. Estimates will be monitored by the Authorized User for accuracy.
- e. The Contractor shall perform the services as described in the estimate, upon request from the Authorized User.
- f. Estimates shall be provided to the Authorized User within three (3) business days after the initial request is made by the Authorized User unless otherwise specified by the Authorized User.
- g. In the event that Vendor A is unreachable after twenty-four (24) hours of initial contact or unable to perform the work for any reason including due to time constraints, the Authorized User shall obtain written documentation then, and only then, move to Vendor B. The same process shall apply if Vendor B is unable to perform the work and move to Vendor C. If Vendor C is unable to perform the work, the Authorized User should contact the Contract Administrator and solicit work from a non-Contract vendor upon approval from the CPO.

A.6. Contractor Award of Emergency Jobs.

- a. Authorized Users will use "constant compete" based on time, when dealing with emergency situations. The Authorized User will send the A, B, and C vendors a detailed scope of the emergency job. The vendors will respond back with the date they can start the job, as well as the estimated completion date. The job will be awarded to the vendor who is able to complete the job in the most time efficient manner.
- b. In order for a vendor to be considered for award of an emergency job, the vendor shall respond with their timeline within three (3) hours of initial contact.
- c. The Authorized User has the sole discretion to determine the job as an emergency. The Authorized User must indicate that the job is an emergency when requesting service for the job.

A.7. Site Visits.

- a. The Contractor shall be called out for a site visit in company with the State's or Authorized User's Geotechnical or Maintenance personnel prior to issuance of a Purchase Order. The Contractor shall schedule and conduct the site visit within 48 hours following notification by Authorized User personnel. The purpose of the site visit will be for the Contractor to evaluate and prepare an estimate of the materials and services needed to repair the site to the engineer's specifications. The Contractor shall provide a detailed written estimate of materials and services needed to repair the site to the Authorized User's specifications within 48 hours following the site visit. The Contractor is responsible for the accuracy of their measurements. Any necessary subsurface exploration, site survey, and slope stability modeling to prepare the estimate is the responsibility of the Contractor. If it is determined that a subsurface exploration is required, the time frame required to conduct the subsurface and exploration and provide a repair estimate will be jointly agreed upon by the Authorized User and the Contractor.
- b. Emergency site visit: The Contractor shall schedule a site visit within 24 hours following notification by Authorized User personnel in the event of an emergency. The Contractor shall follow the same procedures as described in section A.7.a. concerning the estimate and specifications.
- c. All written estimates for Group One, Soil Nailing must contain a warranty statement guaranteeing the full roadway stability for the repaired section for a period of seven (7) years and that any necessary repairs will be made in a timely manner at no cost to the

Authorized User. This warranty statement must be jointly endorsed by the Contractor and the Contractor's Engineer.

- A.8. Engineering Plans. Following review of the repair estimate and issuance of a purchase order, the Contractor will provide all necessary engineering plans and details required to successfully repair landslides for review and approval by either the TDOT Geotechnical Office or by an authorized agency administrator. For Group One Soil Nailing, these plans shall be stamped by a registered Professional Engineer (PE), licensed in the State of Tennessee, who is knowledgeable in the design and implementation of slope stabilization and related work. Changes or deviations from the approved submittals must be resubmitted for approval. No adjustments in project time will be allowed due to incomplete submittals. The PE stamped submittals shall include, at a minimum, the following information:
- a. A description of the construction sequence and a schedule for the work.
 - b. At a minimum, a description and detail of the size, length, and spacing of reinforcing elements to be placed in order to meet minimum static (1.3) and minimum seismic (1.1) factors of safety for global stability of the repair. The materials and components selected will meet a 75-year design life. Designs will include consideration of appropriate loadings, geometry, and material properties associated with the native soils, backfill, reinforcement connections, facing, and other design elements. Retaining wall design requires a globally stable analysis based on the contractor's evaluation at the time of site visit.
 - c. All necessary details to successfully construct any temporary/permanent facing and drainage system.
- A.9. Staff Requirements. Contractor must provide and maintain adequate staffing and equipment to deploy to up to three (3) sites simultaneously to respond timely for emergency repairs and to provide emergency design/build services within the State of Tennessee. Contractor's registered engineer(s) involved in each project are expected to be continuously involved for the duration of each job including, but not limited to, the design phase, providing site supervision, coordinating with State's or Authorized User's engineers/representatives and revising engineering plans, if necessary, based on conditions encountered during each job.
- A.10. Equipment Requirements. Contractor's equipment shall be suitable for the intended purpose and shall meet all federal and state Occupational Safety and Health Administration (OSHA) regulations.
- A.11. Operations Requirements. All Contractor crew persons and operators shall possess the knowledge, skills, and abilities to perform all aspects of their role and operation of the equipment and to follow the practices and methods of roadway maintenance and construction used by the Authorized User. The Contractor shall ensure that equipment operators and foreman shall have experience installing soil nails with the Contractor's organization. Upon request, the Contractor must submit documentation to a State or Authorized User Geotechnical representative showing that project personnel have appropriate qualifications.
- The Contractor's operators shall not create any hazardous condition with the operation of the equipment. All personnel shall at all times wear approved protective clothing, safety vests, and any other equipment required to meet OSHA and TDOT standards. The Contractors operators shall obey all traffic and safety rules and regulations.
- A.12. AASHTO Requirements. The Contractor shall comply with AASHTO Specifications, or accepted industry standards for any specific items not addressed herein or elsewhere in the Contract.
- A.13. Delay of Installation. The Contractor must complete each individual job in a timeframe agreed upon by the Authorized User and the Contractor prior to the beginning of work in writing. This documentation must include, at a minimum, job location, start date, agreed upon completion date and signatures indicating agreement by both parties. If the Contractor is unable to deliver material(s) or services under the previously agreed upon timeframe between the Contractor and the Authorized User, for reasons other than weather or temperatures, the Contractor must immediately notify the Authorized User, in writing, that material(s) or services cannot be furnished

and must provide a proposed alternate completion date and reason for delay. The Authorized User has 72 hours to accept or reject the revised completion date. In the event that the Authorized User rejects the proposed alternate completion date, the Authorized User reserves the right to seek an estimate from another Contractor in accordance with Section A.5. and A.6. to complete the specified job.

- A.14. Mobilization/Demobilization. Contractor must perform all work and operations necessary to load and unload equipment, move personnel, supplies, and incidentals to and from the project site to accomplish all other miscellaneous associated work items or operations that must be performed, including cost that must be incurred to begin work on the project and acceptable completion of construction operations on the project.
- A.15. State/Authorized User Responsibilities
- a. The Authorized User will provide all traffic control, guardrail, public notification, clearing of the site, environmental controls, paving, backfill material, other items, and permits and will arrange and obtain access to adjacent property as needed.
 - b. If the stabilization area exceeds 20 feet from the road surface, the Authorized User will work with the Contractor on a case-by-case basis to ensure the job will be successful. The Authorized User may provide benching and access roads for these stabilization areas of more than 20 feet. For stabilization areas less than 20 feet, the Contractor will be expected to work from the road surface.
- A.16. Rig and Crew Requirements. Contractor(s) awarded Group One must have at least three (3) operational soil nail installation rigs (owned or currently leased through the Contract Term) and three (3) qualified crews readily available for deployment within 48 hours to multiple locations simultaneously. Soil nail rigs must be capable of drilling a minimum of 200 feet in length and six inches in diameter. Equipment utilized for the standard installation of self-drilling soil nails and permanently cased soil nails, while staged on the roadway platform, shall have the ability to reach and install a soil nail a minimum of fifteen (15) feet below and twenty (20) feet above the roadway platform. Contractor shall coordinate work activities to maximize traffic flow during geohazard repairs when approved by the State's or Authorized User's engineer.
- A.17. Required Experience. Contractor(s) awarded Group One must possess the following experience and required elements of responsibility detailed below. Replacement of these personnel will only be permitted with the prior written approval of the Authorized User. The Authorized User must receive appropriate documentation of experience for any proposed replacement personnel.
- a. Firm: The Contractor's must have, within the last five (5) years, successfully stabilized no less than ten (10) active landslides using each of the soil nail types that the Contractor is awarded to provide (i.e. self-drilling soil nails and permanently cased soil nails) on an active, public roadway while maintaining traffic on the impacted roadway.
 - b. Engineer: Contractor must use engineer(s) with at least five (5) years of verifiable experience in landslide stabilization using soil nails. The engineer(s) must have successfully designed no less than ten (10) projects within the last five (5) years which successfully stabilized an active landslide using each of the soil nail types that the Contractor is awarded to provide (i.e. self-drilling soil nails and permanently cased soil nails) on an active, public roadway while maintaining traffic on the impacted roadway.
 - c. Project Manager/Superintendent: Contractor must have project manager(s)/superintendent(s) who have successfully managed no less than ten (10) projects within the last five (5) years which successfully stabilized an active landslide using each of the soil nail types that the Contractor is awarded to provide (i.e. self-drilling soil nails and permanently cased soil nails,) on an active, public roadway while maintaining traffic on the impacted roadway.
 - d. Soil Nail Rig Operator: Contractor must have at least three (3) soil nail rig operators who have successfully operated rigs on no less than five (5) projects within the last five (5) years which successfully stabilized an active landslide using soil nails on an active, public roadway while maintaining traffic on the impacted roadway.

- e. Shotcrete Nozzle Operator: Contractor must have at least three (3) shotcrete nozzle operators who have successfully installed at least 10,000 square feet of shotcrete in the last five (5) years to stabilize an active landslide on an active, public roadway while maintaining traffic on the impacted roadway. Upon request, Contractor must provide current ACI certifications.

A.18. Self Drilling Soil Nails. Contractor(s) awarded Group One must furnish self-drilling soil nails that consist of a hollow, threaded bar with a sacrificial drill bit. Multiple bars may be coupled to produce final length. Bar thread pattern should be continuous and conform to the pullout requirements of ASTM A 615 (Williams Form Engineering "B7X" or Ischebeck "Titan" bars, or equivalent approved by the State's or Authorized User's engineer.). The Contractor shall ensure they remain compliant with any updates to ASTM A 615 throughout the term of this contract. Bar outer diameters shall be a minimum of 1.5 inches and up to and 3 inches depending on design load.

A.19. Permanently Cased Soil Nails. Contractor(s) awarded Group One must furnish permanently cased soil nails that are a three-stage construction including installation of:

- a. An outer tube (minimum 1.5 inch outside diameter, minimum 0.120 inch wall thickness hot-dipped, galvanized steel tube that is mechanically deformed, threaded, or specially galvanized through a dressing process to produce a plurality of surficial asperities).
- b. Neat cement grout that completely fills the outer tube.
- c. An inner bar consisting of epoxy coated, #6 grade 60 or grade 75 rebar or thread bar depending on final design load. When applicable, provide perforated tubes that can be pressure grouted.

A.20. Shotcrete. Contractor(s) awarded Group One must furnish shotcrete complying with the requirements of ACI 506.2, "Specifications for Materials, Proportioning and Application of Shotcrete", except as otherwise specified. Shotcreting consists of applying one or more layers of concrete conveyed through a hose pneumatically projected at a high velocity against a prepared surface.

- a. Shotcrete must be produced by either a wet-mix or a dry-mix process. The wet-mix process consists of thoroughly mixing all the ingredients except accelerating admixtures, but including the mixing water, introducing the mixture into the delivery equipment and delivering it, by positive displacement, to the nozzle. Air jet the wet-mix shotcrete from the nozzle at high velocity onto the surface. The dry-mix process consists of producing shotcrete by delivering the dry ingredients conveyed pneumatically with the mixing water introduced at the nozzle. For additional descriptive information, refer to the American Concrete Institute ACI 506R "Guide to Shotcrete."

- b. Contractor must use materials for shotcrete conforming to the following requirements:

Materials	Requirements
Cement	AASHTO M85/ ASTM C150, Type I, II, III or V.
Fine Aggregate	AASHTO M6/ASTM C33 clean, natural.
Coarse Aggregate	AASHTO M80, Class B for quality.
Water	Clean and Potable. AASHTO M157/ASTM C94.
Chemical Admixture Accelerator	Fluid type, applied at nozzle, meeting requirements of AASHTO M194/ASTM C494/ASTM C1141.
Water-Reducer and Super Plasticizer Mineral Admixtures	AASHTO M194/ASTM C494 Type B or D.
Fly Ash	AASHTO M295/ASTM C618 Type F or C, cement replacement up
Silica Fume	ASTM C1240, 90 percent minimum silicon dioxide solids content, not to exceed 12 percent by weight of cement.
Welded Wire Fabric	AASHTO M55/ASTM A185 or A497.
Prepackaged Shotcrete	ASTM C928

- c. Contractor must deliver, store, and handle materials to prevent contamination, segregation, corrosion or damage. Properly store liquid admixtures to prevent evaporation and freezing.
- d. Contractor must obtain Authorized User's approval for the proposed mix design and method of placement prior to beginning shotcrete placement.
- e. Contractor must use aggregate for shotcrete meeting the strength and durability requirements of AASHTO, as applicable, and the following gradation requirements:

Sieve Size	Percent Passing by Weight
½"	100%
3/8"	90-100%
No. 4	70-85%
No. 8	50-70%
No. 16	35-55%
No. 30	20-35%
No. 50	8-20%
No. 100	2-20%

- f. Contractor must proportion the shotcrete to be able to be pumped with the concrete pump furnished for the work, with a cementing materials content of at least 24.3 pounds per cubic foot and water/cement ratio not greater than 0.55. Contractor shall not use admixtures unless approved by the State's or Authorized User's engineer. Contractor must thoroughly mix admixtures into the shotcrete at the rate specified by the manufacturer. Contractor must use only accelerators compatible with the cement used, non-corrosive to steel, and not promoting other detrimental effects such as cracking or excessive shrinkage. The maximum allowable chloride ion content of all ingredients is 0.10% when tested to AASHTO T260.
 - g. Contractor shall use air entrainment for all exposed permanent shotcrete, but air entertainment is not required for temporary shotcrete construction facings.
 - h. Contractor shall provide shotcrete with a minimum design compressive strength of 2000 psi in three (3) days and 4000 psi in 28 days.
 - i. Contractor must batch the aggregate and cement by weight or by volume in accordance with the requirements of ASTM C94 or AASHTO M241/ASTM C685. Contractor must use mixing equipment that thoroughly blends the materials in sufficient quantity to maintain placing continuity. Contractor must produce ready mix shotcrete complying with AASHTO M157. Contractor must batch, deliver, and place shotcrete within 90 minutes of mixing. The use of retarding admixtures may extend application time beyond 90 minutes if approved by the State's or Authorized User's engineer.
 - j. Contractor may use premixed and packaged shotcrete mix for on-site mixing. Contractor must use packages containing materials conforming to Section A.20. of the Contract. The placing time limit after mixing shall be per the manufacturers' recommendations.
 - k. To eliminate water build-up behind the shotcrete wall, the Contractor shall use strip drains that are the full width of shotcrete (down slope) at a maximum of six (6) foot centers. Strip drain details and suppliers shall be submitted and approved prior to the job's start date by the engineer and shall be fully encased in filter media. Drains shall extend beyond the face of the shotcrete at the downhill face.
- A.21. Wire Mesh Surface Treatment (Includes Plates)
 Contractor(s) awarded Group One shall furnish and install high strength single twist wire mesh to prevent shallow plane failures around a soil nail array.

- a. Mesh Type: High strength single twist rock fall mesh
 - b. Wire diameter: .118 inches or greater
 - c. Wire Strength: 75 ksi or greater
 - d. Wire Coating: Minimum of 0.8 ounces/square foot (as determined by ASTM A-90) Zinc/Aluminum Alloy (as per ASTM B750-09). Plain hot-dip galvanized is not acceptable.
 - e. Mesh Opening Size: 2.56 inches or smaller (using maximum circle method), area of opening shall not be less than 8.2 square inches
 - f. Plate Material: ASTM A36 Steel or stronger
 - g. Plate Coating: Hot dip galvanized in accordance with ASTM A153/A123
 - h. Plate Thickness: 3/8 or 1/2 inch, depending on design
 - i. Plate dimensions: Square or Diamond Shaped, minimum area 48 square inches
- A.22. Cellular Grout. Contractor(s) awarded Group One must provide the following: cellular grout containing foaming agents shall be a Cellular Concrete Class of I or II that produces a Cast Density of 24-35 Pcf and a minimum compressive strength at 28 days of 10-40 psi. Compressive Strength will be determined using ASTM C 495 as modified herein. All materials shall be delivered, stored and handled per recommendations of cellular concrete manufacturer. May use admixtures for accelerating the set time under the manufacturer's recommendations. A foaming agent must be used and tested in accordance with ASTM C 796. Mixing water shall be potable and free of deleterious amounts of acids, alkali, salts, oils, and organic materials. Portland cement must comply with ASTM C 150, Types II/V. Pozzolans and other cementitious materials may be used when approved by the manufacturer of the foaming agent. Fly ash and natural pozzolans must comply with ASTM C 618.
- A.23. Retaining Wall Structure. Contractor (s) awarded Group One must provide engineered wall systems comprised of materials meeting the specifications in construction plans. Wall types to be used shall be on the TDOT Qualified Products List- 38 at the time of installation. (See URL, <https://www.tn.gov/tdot/materials-and-tests/research---product-evaluation-and-qualified-products-list.html> for latest updates)
- A.24. Self Drilling Soil Nails Installation.
- Contractor(s) awarded Group One must:
- a. Use drilling rigs capable of drilling through any materials that are encountered to the dimensions and orientations required for the soil nail wall design.
 - b. Drill straight and clean holes at locations shown in the accepted submittals. Drill hole locations and inclinations are required to be within 6" (150 mm) and 5 degrees, respectively, of that shown in the accepted submittals unless approved otherwise by the State's or Authorized User's engineer.
 - c. Drill all self-drilling nails with continuous grout injection unless approved otherwise by the State's or Authorized User's engineer.
 - d. Assume all risks associated with unforeseen groundwater or adverse drilling conditions, including excess grout take. (Note: Grout in excess of 1.5 theoretical can be considered as Void Fill Grout Installation item.)
- A.25. Permanently Cased Soil Nails Installation.
- Contractor(s) awarded Group One must:
- a. Construct permanently cased soil nails by drilling a hole to prescribed depth at the prescribed location as shown on the engineering plans, inserting a 1.5 inch (or larger) outside diameter steel pipe (outer tube) to stabilize the drill hole, fully encasing the inside of the outer tube with grout (neat cement) and immediately inserting an epoxy coated #6 (or larger depending on required tensile strength) reinforcing bar as the inner bar.
 - b. Provide perforated tube and grout under pressure when applicable.
 - c. The Contractor bears the risk of unforeseen groundwater or adverse drilling/casing conditions, including excess grout take. (Note: Grout in excess of 1.5 theoretical can be considered as Void Fill Grout Installation item.)
- A.26. Shotcrete Installation.

Contractor(s) awarded Group One must:

- a. Construct shotcrete with a nominal thickness of 6", 8", or 12" with either welded wire fabric or triple twisted galvanized wire mesh placed approximately 2" from the ground surface. The following information shall be submitted to the Authorized User for review and approval prior to the actual work:
 1. All shotcrete nozzle operators shall have a current ACI shotcrete nozzle operator's certification. Contractor shall be fully responsible for training, operation, and results of all work performed by the nozzle operators.
 2. Proposed methods of shotcrete placement and of controlling and maintaining facing alignment and location and shotcrete thickness.
 3. Shotcrete mix design performed by a Certified ACI Level II Technician or Tennessee Registered Professional Engineer including:
 - i. Type of Portland cement
 - ii. Aggregate source and gradation
 - iii. Proportions of mix by weight and water-cement ratio
 - iv. Proposed admixtures, manufacturer, dosage, technical literature
 4. Previous strength test results for the proposed shotcrete mix completed within one (1) year of the start of shotcreting may be submitted for initial verification of the required compressive strengths at start of production work. If the submitted test results meet the Authorized User's approval, then further testing will not be required. If results do not meet approval, then the Authorized User reserves the right to require further testing.
- b. Do not begin shotcrete construction or incorporate materials into the work until the submittal requirements are satisfied and accepted by the Authorized User. Re-submit changes or deviations from the accepted submittals. No adjustments in contract time or compensation will be allowed due to incomplete submittals.
- c. Ensure the minimum thickness of shotcrete by field measurements.
- d. Clean the face of the excavation and other surfaces to be shotcreted of loose materials, mud, rebound, overspray or other foreign matter that could prevent or reduce shotcrete bond. Protect adjacent surfaces from overspray during shooting. Avoid loosening, cracking, or shattering the ground during excavation and cleaning.
- e. Remove any surface material that is loosened or damaged to a sufficient depth to provide a base that is suitable to receive the shotcrete.
- f. Remove material that loosens as the shotcrete is applied. The cost of additional shotcrete is incidental to the work.
- g. Divert water flow and remove standing water so that shotcrete placement will not be detrimentally affected by standing water.
- h. Do not place shotcrete on frozen surfaces.
- i. Maintain a clean, dry, oil-free supply of compressed air sufficient for maintaining adequate nozzle velocity at all times.
- j. Use equipment capable of delivering the premixed material accurately, uniformly, and continuously through the delivery hose.
- k. Control shotcrete application thickness, nozzle technique, air pressure, and rate of shotcrete placement to prevent sagging or sloughing of freshly-applied shotcrete.
- l. Orient nozzle at a distance and approximately perpendicular to the working face so that rebound will be minimized and compaction will be maximized.
- m. Pay special attention to encapsulating reinforcement.
- n. Do not work rebound back into the construction.
- o. Where shotcrete is used to complete the top ungrouted zone of the nail drill hole near the face, position the nozzle into the collar of the drill hole to completely fill the void.
- p. A clearly defined pattern of continuous horizontal or vertical ridges or depressions at the reinforcing elements after they are covered with shotcrete will be considered an indication of insufficient reinforcement cover or poor nozzle techniques. In this case immediately suspend the application of shotcrete and implement corrective measures before resuming the shotcrete operations. Correct the shotcreting procedure by adjusting the nozzle distance and orientation, by ensuring adequate cover over the reinforcement, by adjusting the water content of the shotcrete mix or other means.

- q. Repair shotcrete surface defects as soon as possible after placement. Remove and replace shotcrete that exhibits segregation, honeycombing, lamination, voids, or sand pockets. In-place shotcrete not meeting the specified strength requirement will be subject to remediation. Possible remediation options include placement of additional shotcrete thickness or removal and replacement, at no additional cost to the Authorized User.
- r. Provide a minimum reinforcement overlap at reinforcement splice joints as per industry standards. Clean and wet the surface of a joint before adjacent shotcrete is applied. Where shotcrete is used to complete the top ungrouted zone of the nail drill hole near the face, to the maximum extent practical, clean and dampen the upper grout surface to receive shotcrete, similar to a construction joint.
- s. Use either an undisturbed gun finish as applied from the nozzle or a rough screed finish.
- t. Must not install shotcrete if the ground is frozen. Maintain cold weather protection if the temperature after placement is below 40°F until the in-place compressive strength of the shotcrete is greater than 725 psi. Cold weather protection may require blankets, heating under tents, or other means approved by the Authorized User. Deposit the shotcrete mix at a temperature of not less than 40°F or more than 100°F.
- u. Suspend shotcrete application during high winds and heavy rains unless suitable protective covers, enclosures or wind breaks are installed. Remove and replace newly placed shotcrete exposed to rain that washes out cement or otherwise makes the shotcrete unacceptable. Provide a polyethylene film or equivalent to protect the work from exposure to adverse weather.
- v. The Contractor shall be responsible for meeting all federal, state, and local safety code requirements to include OSHA requirements.
- w. Use six (6) to twelve (12) inch strip drains full width of shotcrete (down slope) at six (6) foot centers to eliminate water build-up behind the shotcrete wall. Strip drain shall be fully encased in filter media. Drains shall extend beyond the face of the Shotcrete at the downhill face. Ensure that bottom ends are open and free of shotcrete.

A.27. Wire Mesh Surface Treatment Installation.

Contractor(s) awarded Group One must:

- a. Ensure that the mesh shall be stretched tight across the slope and over the nail tips.
- b. Dig shallow depressions at least 12 inches in diameter and at least 8 inches deep around the nail tips.
- c. Install galvanized steel plates over the nail tips and post-tensioned to up to 10,000 pounds-force, as specified on the engineering plans provided by the Contractor and agreed upon by the Authorized User. Torque-tension relationships may be used to verify appropriate loading.

A.28. Soil Nail Sampling and Testing.

- a. Prior to acceptance of the soil nails, the Contractor must certify to the Authorized User that the material composition and installation conforms to these specifications, combined with visual inspection of the in place soil nails and shotcrete by the Authorized User. The Authorized User reserves the right to require testing by the Contractor. Any requested testing of the soil nails will follow appropriate procedures as outlined in Federal Highway Administration (FHWA) Geotechnical Engineering Circular No. 7 and/or manufacturer's recommendations. Materials found not in compliance with the requirements of this Contract may be rejected, removed and replaced at the Contractor's expense.
- b. Proof tests are intended to verify that there are no significant variations in soil nail performance throughout the wall. The Contractor shall provide proof testing as required per the latest revision of FHWA -NHI-007 "Soil Nail Walls Reference Manual".
- c. Verification tests shall be completed on non-production, "sacrificial" nails prior to construction. Verification testing may be required during production to verify capacities for different in situ conditions encountered during construction and/or different installation methods. The verification tests must be conducted on nails as considered in design and constructed with the same construction methods to be used on production nails. It would be optimal for verification tests to reach pullout, which is defined as the test load at which attempts to further increase the test load increments result in continued movement of the

tested nail, when the maximum test load is applied. The Contractor shall provide verification testing as required per the latest revision of FHWA -NHI-007 "Soil Nail Walls Reference Manual".

- d. Shotcrete Testing – The Contractor shall provide a shotcrete mix design for approval once per calendar year to TDOT's Materials and Tests Division. Once approved, shotcrete testing per the TDOT's Construction Specifications will be waived and the specifications in this contract will govern for projects performed under this contract.

A.29. Cellular Grout. Cellular Grout must be job site mixed with foaming agent and placed with equipment specialized for cellular concrete lightweight material. Cement and water may be premixed and delivered to the job site and foaming agent added on site. Once mixed, the cellular concrete shall be conveyed promptly to the location of placement without excessive handling. If ambient temperatures are anticipated to be below 32 degrees F within 8 hours after cellular concrete placement, mixing water must either be heated as approved by foaming agent manufacturer or placement must be prohibited.

A.30. Retaining Wall. The retaining wall structure shall be constructed to lines and grades determined by the plans as required in Sections A.8. and A.23 of the Contract. Backfill will be provided by the Authorized User or bid item "Select Granular Backfill". The item "Select Granular Backfill" cost shall only include the cost of the material and transport to the project location, all other costs in handling, placing, grading, and compacting is to be included in other bid items. It shall be the Contractor's responsibility to select, place, and compact the material in accordance with the design of the retaining wall structure. All combinations of backfill and geosynthetic reinforcement materials shall be based on the plans developed as outlined in section A.8. All geosynthetic reinforcement materials shall be on the TDOT Qualified Products List 36 at the time of installation. (Reference link: <https://www.tn.gov/tdot/materials-and-tests/research---product-evaluation-and-qualified-products-list.html> for latest updates).

A.31. Offset Drilling.

- a. Contractor(s) awarded Group One shall provide modified rotary drill, truck, rubber tire or track mounted with operator to drill 7 inch to 10 inch diameter holes in soil and rock to install (in place) steel railroad rails up to 39 feet in length and weighing up to 140 lbs. per linear yard. Rotary Drill must have capability of drilling holes that are offset a minimum of five (5) feet from the edge of the truck tire or track (if track mounted) to the center of the hole. Drill rig must be capable of handling steel railroad rail up to 39 feet in length. Drill rig should be powered by motor of 130 horsepower or greater with at least 16,000 lbs. pulldown pressure and a 300 CFM or greater air compressor. Drill rig must be capable of drilling from either side or back of carrier.
- b. Drill must have capability of drilling a maximum of forty (40) foot holes from elevation of roads. Contractor must be able to drill and install 800 feet of railroad steel per 8-hour workday. Leeway will be given for weather and unforeseen circumstances at the Authorized User's discretion.

A.32. Horizontal Drains.

Contractor(s) awarded Group Two shall provide and install horizontal drains.

Horizontal drains consist of 1.5-inch diameter (or larger) slotted schedule 80 (or thicker) polyvinyl chloride (PVC) plastic pipe conforming to the requirements of ASTM Designation: D 1785. These pipes are inserted into drilled holes to reduce water pressures within slide masses.

Pipe Slots/Perforations: Slotted pipe shall have two (2) rows of slots. The rows shall be in the longitudinal direction of the pipe and the slots shall be cut in the circumferential direction of the pipe. The rows shall be centered on two (2) of the third points (120 degrees apart) of the pipe circumference. Each row of slots shall conform to one of the following configurations. Slots shall be spaced uniformly along the pipe. The minimum opening will be measured on the inner surface of the pipe.

Number of Slots (± 1) per Linear Foot	Width of Slot (Inches)	Minimum Opening per Linear Foot (Square Inches)
46	0.010	0.46

Perforated pipe shall have three (3) rows of perforations with one row on each side of the pipe and the third row in the top. Fittings for the PVC plastic pipe shall be Schedule 80 Type II PVC solvent weld type fittings conforming to the requirements in ASTM Designation: D 2467. Machined male and female ends may be used in lieu of couplings. Unslotted or unperforated PVC plastic pipe, between 5 ft to 20 ft length, shall be provided at the outlet of the drain.

- A.33. Rail. Contractor(s) awarded Group Three shall use recycled railroad rails classified with a nominal weight of 130 lb/yd (pounds per yard) size or greater. Use only visibly straight recycled railroad rails with no splices. The Engineer will verify rail nominal weights (manufacturer's stamp with lb/yd, date, etc.). Provide certification for nominal weight if the manufacturer's stamp is unidentifiable.
- A.34. Cribbing. Contractor(s) awarded Group Three shall install cribbing as slide location dictates or as directed by the engineer. Extend wall cribbing 2 feet below the existing ground line as measured from the back side of the installed railroad rails. If bedded rock is encountered, install the cribbing to the bedded rock only. The engineer will direct changes if necessary, to this procedure. Wall cribbing shall be lapped, bolted, and attached solid to the drilled railroad rails. Use wall cribbing: recycled steel "w" beam guardrail.
- A.35. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

- A.36. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

This Contract shall be effective on June 13, 2020 ("Effective Date") and extend for a period of thirty-six (36) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

- B.1. **Renewal Options.** This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to number (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.
- B.2. **Term Extension.** The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. **Estimated Liability.** The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be fourteen million dollars (\$14,000,000) ("Estimated Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. **Price Changes.** Prices listed in awarded published catalog, price lists or price schedule shall remain firm for **three hundred-sixty-five (365)** days ("Firm Price Period").
 - a. **Price Decreases.** After the Firm Price Period, prices shall be equitably adjusted to reflect a decrease in Contractor's costs.
 - b. **Price Increases.** After the Firm Price Period, Contractor may request price increases. The request shall: include copies of the new price lists or catalog that reflect a change in the Contractor's cost; not constitute an increase in profit; and apply to all of the Contractor's customers.
 - c. **Approval of Price Changes.** The State may at its sole option: (1) grant the Contractor's request; (2) cancel the Contract and award it to the next apparent best evaluated Respondent; (3) cancel the Contract and reissue the solicitation; or (4) deny the Contractor's request. If approved, any price changes of less than seven percent (7%) will become effective upon the State's approval in writing. Price changes exceeding seven percent (7%) shall require a Contract amendment. The Contractor shall honor all purchase orders dated prior to the approved price change. Upon request from the State, the Contractor shall furnish the approved catalog, price schedule or price list as applicable to the State at no charge.
- C.3. **Payment Methodology.** The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
 - a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
 - b. The Contractor shall be compensated based upon the following payment methodology:

Line Item Description	UOM	Unit Price
Group 1		
Nails, Self Drilling, up to 20 ft	EA	TBD
Nails, Self Drilling, up to 30 ft	EA	TBD
Nails, Self Drilling, up to 40 ft	EA	TBD
Nails, Self Drilling, up to 50 ft	EA	TBD
Nails, Self Drilling, up to 60 ft	EA	TBD
Nails, Self Drilling, up to 70 ft	EA	TBD
Nails, Self Drilling, up to 80 ft	EA	TBD
Nails, Permanently Cased, up to 20 ft (std grouting)	EA	TBD
Nails, Permanently Cased, up to 30 ft (std grouting)	EA	TBD
Nails, Permanently Cased, up to 40 ft (std grouting)	EA	TBD
Nails, Permanently Cased, up to 50 ft (std grouting)	EA	TBD
Nails, Permanently Cased, up to 60 ft (std grouting)	EA	TBD
Nails, Permanently Cased, up to 70 ft (std grouting)	EA	TBD
Nails, Permanently Cased, up to 80 ft (std grouting)	EA	TBD
Wire Mesh and steel plate surface treatment	SF	TBD
Shoulder Build-up, Road Service	LF	TBD
Primary Mobilization (mobilization to initial site)	EA	TBD
Shotcrete, Nominal 6-in thickness (std weather)	SF	TBD
Shotcrete, Nominal 8-in thickness (std weather)	SF	TBD
Shotcrete, Nominal 12-in thickness (std weather)	EA	TBD
Shotcrete, Nominal 6-in thickness (cold weather - below 35°F)	SF	TBD
Shotcrete, Nominal 8-in thickness (cold weather - below 35°F)	SF	TBD
Shotcrete, Nominal 12-in thickness (cold weather - below 35°F)	SF	TBD
Nails, Permanently Cased Soil, up to 20 ft (pressure Grouting)	EA	TBD
Nails, Permanently Cased Soil, up to 30 ft (pressure Grouting)	EA	TBD
Nails, Permanently Cased Soil, up to 40 ft (pressure Grouting)	EA	TBD
Nails, Permanently Cased Soil, up to 50 ft (pressure Grouting)	EA	TBD
Nails, Permanently Cased Soil, up to 60 ft (pressure Grouting)	EA	TBD
Nails, Permanently Cased Soil, up to 70 ft (pressure Grouting)	EA	TBD
Nails, Permanently Cased Soil, up to 80 ft (pressure Grouting)	EA	TBD
Vertical Reinforced Element	LF	TBD
Select Granular Backfill Material	TON	TBD
Geogrid Reinforcement Type 1	SY	TBD
Geogrid Reinforcement Type 2	SY	TBD
Geogrid Reinforcement Type 3	SY	TBD
Geogrid Reinforcement Type 4	SY	TBD
Retaining Wall Facing Elements	SF	TBD
Geosynthetic Reinforcement Fabric	SY	TBD
Cellular Grout	CY	TBD
Soil Nail Proof and Verification Testing	EA	TBD
Preconstruction Shotcrete Panel	EA	TBD
Void Fill Grout Installation	CY	TBD
Galvanized Wire Baskets or Welded Wire Form (Not to exceed 10 FT. in Height). *** (All Incidental Items Included EXCEPT Backfill).	SF	TBD
Group 2		
Horizontal Drains, 0 to 50 ft	FT	TBD
Horizontal Drains, 50 - 100 ft.	FT	TBD

Horizontal Drains, 100 -150 ft.	FT	TBD
Horizontal Drains, 150 - 200 ft.	FT	TBD
Horizontal Drains, 200 + ft.	FT	TBD
Horizontal Drains, up to 70 ft	EA	TBD
Horizontal Drains, up to 80 ft	EA	TBD
Primary Mobilization (Mobilization to initial site)	EA	TBD
Group 3		
Class A Concrete	CY	TBD
Geogrid Reinforcement Type 1	SY	TBD
Geogrid Reinforcement Type 2	SY	TBD
Geogrid Reinforcement Type 3	SY	TBD
Geogrid Reinforcement Type 4	SY	TBD
Geosynthetic Reinforcement Fabric	SY	TBD
Installation of State-Provided Railroad Rail	LF	TBD
Installation of Vendor-Provided Railroad Rail	LF	TBD
Installation of State-Provided Cribbing	SF	TBD
Installation of Vendor-Provided Cribbing	SF	TBD
Primary Mobilization (Mobilization to initial site)	EA	TBD
Select Granular Backfill Material	TON	TBD
Mandatory Line for All Groups		
Emergency Site Visit 24 Hrs.	EA	TBD
Approved Parts, Materials, Supplies and Equipment with Markup	EA	NO BID REQUIRED

- c. **Proof of Cost for Additional Parts, Materials, Supplies and Equipment. This requires prior approval from TDOT**

All parts, materials, supplies and equipment will be billed at vendor/contractor's cost, minus any applicable sales or use tax pursuant to Tennessee Code Annotated, Section 67-6-209, plus a markup, not to exceed fifteen percent (+15%).

The vendor shall submit as backup documentation a copy of the original purchase invoice(s) as proof of cost for parts, materials, supplies and equipment. This backup documentation must accompany the invoice in order for the agency to process payment. If the vendor/contractor cannot produce a copy of the original purchase invoice as proof of cost, the state may verify current market value and if necessary, adjust the invoice to reflect fair market price.

Discounts, including prompt payment discount offered by suppliers, must be credited to the state in determining the actual cost of the parts, materials, supplies and equipment used for this contract.

C.4. Method of Measurement & Payment

- a. Soil Nails. The State will measure self-drilling soil nails in seven units of measure. They will be measured up to 20 feet, up to 30 feet, up to 40 feet, up to 50 feet, up to 60 feet, up to 70 feet, and up to 80 feet in length. The State will not make payment for materials on site and not installed. Upon receipt of proper invoices, The State will pay for the materials delivered and installed and accepted at the Contractor's unit price per nail. Payment at the contract unit price each shall be full compensation for all labor, materials, equipment, and incidentals to furnish and place required nails.
- b. Shotcrete. The State will measure shotcrete in square feet based on 4, 6, 8, and 12 inch section thickness. Upon receipt of proper invoices, the State will pay for the materials delivered and installed and accepted at the Contractor's unit price per square feet. The State will not make payment for partial deliveries. The State will not make payment for

materials on site and not installed. Payment at the contract unit price per square foot shall be full compensation for all labor, materials, equipment, drains, reinforcing steel, shotcrete, and all incidentals to furnish and place shotcrete around the soil nails, including but not limited to any preparatory trimming and cleaning of soil/rock surfaces and shotcrete cold joints in preparation for receiving new shotcrete.

- c. Wire Mesh Surface Treatment. The State will measure wire mesh surface treatment in square feet. Payment at the contract unit price per square foot shall be full compensation for the materials, labor, and equipment necessary for the placement of the wire mesh surface treatment.
- d. Horizontal Drains. The State will measure horizontal drains in linear feet. Upon receipt of proper invoices, the State will pay for the materials delivered and accepted at the Contractor's unit price per linear feet per site as required. The State will not make payment for partial deliveries. Payment at the contract unit price for each unit shall be full compensation for all materials.
- e. Mobilization/Demobilization. For each delivery order, the State will measure mobilization/demobilization as one lump sum, upon completion of all other work on a delivery order and receipt of proper invoices, the State will pay for mobilization/demobilization at the Contractor's lump sum unit price. Payment at the lump sum price bid shall be full compensation for all materials, labor, equipment, and incidentals; to move personnel, equipment, supplies, and incidentals to and from the project site. If equipment can be transported under its own power to an adjacent site within a reasonable distance and agreed upon by the State and the Contractor, mobilization/demobilization will not be paid by the State for the second site.
- f. Cellular Grout. The State will measure grout fill per cubic foot (CY) of grout installed. The State and Contractor shall agree upon how the volume will be measured prior to installation in the field. Payment at the cubic price bid shall be full compensation for all materials, labor, equipment, and incidentals; to move personnel, equipment, supplies, and incidentals to and from the project site.
- g. Retaining Wall Structure.
 - i. Retaining wall facing elements: The State will measure the Retaining Wall face items. Payment at the contract unit price per square foot shall be full compensation for the materials, labor, and equipment necessary for the placement and/or construction of the Facing Elements.
 - ii. Select Granular Backfill Material: The State will provide the Select Granular Backfill Material. In the event the State chooses to not provide the Select Granular Backfill Material, the Contractor must provide and install. The Select Granular Backfill Material will be measured by the ton.
 - iii. 6.10.3 Geosynthetic Reinforcement Material: The State will measure the Geosynthetic Reinforcement Material in square yards. Payment at the contract unit price per square yard shall be full compensation for the materials, labor, and equipment necessary for the placement and/or construction of the Geosynthetic Reinforcement Material.
- h. Proof and Verification Testing.
 - i. Soil Nail Proof Testing: The State will measure the Soil Nail Proof Test per each. Payment at the contract unit price per each shall be full compensation for the materials, labor, and equipment necessary for the performing and conducting the proof tests per the specifications. The State will measure the Soil Nail Verification Test per each. Payment at the contract unit price per each shall be full compensation for the materials, labor, and equipment necessary for the performing and conducting the verifications test(s).

- ii. Preconstruction Shotcrete Testing: The State will measure the Preproduction Shotcrete Test Panels per each. Payment at the contract unit price per each shall be full compensation for the materials, labor, and equipment necessary for the providing Preconstruction Shotcrete Testing per the specifications.

i. Class A Concrete. All class A concrete installed shall meet requirements of section 604 of the STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION January 1, 2015, edition as well as being produced by a supplier in good standing at the time of placement.

j. Select granular backfill. This material shall be a quarried stone product, from a supplier in good standing at the time of placement. The sizing and durability of this material will be acceptable to both the contractor and TDOT and agreed upon before delivery or placement.

C.5 Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

C.6. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

State Agency Billing Address

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

- (1) Invoice number (assigned by the Contractor);
- (2) Invoice date;
- (3) Contract number (assigned by the State);
- (4) Customer account name: **State Agency & Division Name;**
- (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
- (6) Contractor name;
- (7) Contractor Tennessee Edison registration ID number;
- (8) Contractor contact for invoice questions (name, phone, or email);
- (9) Contractor remittance address;
- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
- (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

- b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and

- (4) Include shipping or delivery charges only as authorized in this Contract.
- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.
- C.7. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- C.8. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.9. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.10. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Parker Birt, Category Specialist
Central Procurement Office
312 Rosa L. Parks Ave.
Nashville, TN 37243
Parker.Birt@tn.gov
Telephone # 615-291-5948

The Contractor:

Contractor Contact Name & Title

Contractor Name

Address

Email Address

Telephone # Number

FAX # Number

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.10. Equal Opportunity. The Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

- (1) Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
- (2) Layoff or termination;
- (3) Rates of pay or other forms of compensation; and
- (4) Selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c. If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.

d. In addition, to the extent applicable the Contractor agrees to comply with 41 C.F. R. § 60-1.4, as that section is amended from time to time during the term.

D.11. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.12. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.13. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.14. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.15. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.16. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.17. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

- D.18. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated Liability. This limitation of liability is cumulative and not per incident.
- D.19. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Estimated Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.20. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.
- In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.
- D.21. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.22. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.23. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.24. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.
- The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.
- D.25. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that

the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.26. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.27. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.28. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.29. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.30. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.31. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes any attachments and exhibits;
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.
- D.32. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

D.33. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability (“CGL”) Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers’ Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers’ compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; or
 - vi. The Contractor self-insures its workers’ compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

d. Professional Liability Insurance

i. Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis, then:

1. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;
2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) full years from the date of the final Contract payment; and
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase "extended reporting" or "tail coverage" for a minimum of five (5) full years from the date of the final Contract payment.

ii. Any professional liability insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate; and

iii. If the Contract involves the provision of services by medical professionals, a policy limit not less than three million (\$3,000,000) per claim and three million dollars (\$3,000,000) in the aggregate for medical malpractice insurance.

- D.34. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.
- D.35. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

- D.36. Prevailing Wage Rates. All State contracts for highway construction projects, which are for the purpose of building, rebuilding, locating, relocating or repairing any streets, highways or bridges, require compliance with the prevailing wage laws as provided in Tenn. Code Ann. §§ 12-4-401 – 12-4-415.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.
- a. After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:
- (1) The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
 - (2) Any pricing related to the new lines, items, or options;
 - (3) The expected effective date for the availability of the new lines, items, or options; and
 - (4) Any additional information requested by the State.
- b. The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
- c. To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
- d. Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.
- E.3. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- E.4. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- E.5. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to Solicitation Number (Attachment Reference) and resulting in this Contract.
- The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:
<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.
- E. 6. Clean Air Act and Federal Water Pollution Control Act. As a condition for receipt of federal awards, the Contractor agrees to comply with the Clean Air Act, 42 U.S.C. § 7401 et seq. and the Federal Water Pollution Control Act, 33 U.S.C § 1251 et seq., as those sections are amended from time to time during the term. Violations must be reported to the [insert federal awarding agency] and the Region 4 Office of the Environmental Protection Agency.
- E.7. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract, specifically faithful performance of the work in accordance with the plans, specifications, and Contract

documents. The performance bond shall be in an amount equal to one hundred percent (100%) of the Estimated Liability fourteen million dollars (\$14,000,000). The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and, in the manner, and form prescribed by the State at Attachment **SWC 191 Attachment 2**. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations for the Term, as the Contract is extended or renewed.

Failure to provide to the State the performance bond as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the State's prior written approval.

- E.8. Payment Bond. The Contractor shall provide to the State a payment bond guaranteeing that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance under this Contract with the additional obligation that such contractor shall promptly make payment of all taxes, licenses, assessments, contributions, penalties, and interest. The payment bond will be in an amount equal to twenty-five percent (25%) of the Estimated Liability **fourteen million dollars (\$14,000,000)**. The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and, in the manner, and form prescribed by the State at Attachment **SWC 191 Attachment 2**. The bond shall be issued by a company licensed to issue such a bond in the State of Tennessee. The payment bond shall guarantee that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance during the Term and all extensions or renewals of the Contract.

Failure to provide to the State the payment bond as required under this Contract may result in this Contract being terminated by the State. The payment bond required under this Contract shall not be reduced during the Term without the State's prior written approval.

- E.9. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

- a. Reporting of Total Compensation of the Contractor's Executives.

(1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year, it received:

- i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
- ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>).

As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.

(2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):

- i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
- c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

- E.10. Statewide Contract. This Contract establishes a source or sources of supply for all Tennessee State Agencies. "Tennessee State Agency" refers to the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee with exceptions as addressed in Tenn. Comp. R. & Regs. 0690-03-01-.01. The Contractor shall provide all goods or services and deliverables as required by this Contract to all Tennessee State Agencies. The Contractor shall make this Contract available to the following entities, who are authorized to and who may purchase off of this Statewide Contract ("Authorized Users"):
- a. all Tennessee State governmental entities (this includes the legislative branch; judicial branch; and, commissions and boards of the State outside of the executive branch of government);
 - b. Tennessee local governmental agencies;
 - c. members of the University of Tennessee or Tennessee Board of Regents systems;
 - d. any private nonprofit institution of higher education chartered in Tennessee; and,
 - e. any corporation which is exempted from taxation under 26 U.S.C. Section 501(c) (3), as amended, and which contracts with the Department of Mental Health and Substance Abuse to provide services to the public (Tenn. Code Ann. § 33-2-1001).

These Authorized Users may utilize this Contract by purchasing directly from the Contractor according to their own procurement policies and procedures. The State is not responsible or liable for the transactions between the Contractor and Authorized Users.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF GENERAL SERVICES, CENTRAL PROCUREMENT OFFICE:

MICHAEL F. PERRY, CHIEF PROCUREMENT OFFICER

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
EDISON VENDOR IDENTIFICATION NUMBER:	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION